U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of TRUDY L. GILLMAN and U.S. POSTAL SERVICE,
POST OFFICE, Ogden, UT

Docket No. 97-2742; Submitted on the Record;
Issued December 17, 1999

DECISION and ORDER

Before MICHAEL J. WALSH, DAVID S. GERSON,
MICHAEL E. GROOM

The issues are: (1) whether appellant sustained an injury in the performance of duty on June 28, 1996; (2) whether the Office of Workers' Compensation Programs abused its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

On July 8, 1996 appellant, then a 44-year-old customer service supervisor, filed a claim for benefits based on an emotional condition,[1] alleging that she experienced psychological and emotional stress on June 28, 1996 when she received and read a letter which had been placed in her personal mail slot at the employing establishment and which was accompanied by pornographic and threatening material directed at her.

By letter dated August 26, 1996, the Office advised appellant that it required additional evidence in support of her claim. The Office requested that appellant describe the events of the day and indicate "in what context of the workday" she received the letter, and specifically, whether she picked up her personal mail at the employing establishment post office box, whether she knew the identity of the sender and if so, to describe her relationship with the person. The Office further requested that appellant indicate the causal connection between her receipt of this letter and her employment. In addition, the Office advised appellant that it required medical evidence in support of her claim, including a medical report from a physician, which demonstrated that an injury occurred.

Appellant submitted reports dated September 18, 1996 and January 29, 1997 from Dr. Helen Kjolby, a psychologist, who stated that appellant had sustained post-traumatic stress disorder due to the employment incident of June 28, 1996. She based this diagnosis on the fact

[1] Appellant filed a Form CA-1 claim for benefits based on traumatic injury, although her claim pertained to an emotional condition and therefore should have been processed with the Form CA-2 used for occupational disease claims.

that appellant reexperienced aspects of the traumatic event with heightened anxiety, nervousness, exaggerated startle response, hypervigiliance, particularly when alone, in addition to rapid heart rate, chest pain, nausea and severe headaches. Dr. Kjolby stated that appellant experienced numbness of emotion in general, a wish to avoid the work setting, and difficulty falling asleep. In her January 29, 1997 report, she stated that appellant continued to experience anxiety symptoms consistent with post-traumatic stress disorder, in addition to panic disorder with agoraphobia.

In a September 24, 1996 statement, appellant described the events which transpired on June 28, 1996:

> "I went to pick up the mail for my unit at [the employing establishment]. At that time, I saw a letter in a legal size envelope addressed to me. I opened this letter in the mail room, where I was by myself, and went into shock. It was a pornographic collage of pictures and remarks made about me. I immediately went to [her supervisor] and said 'and you call this dignity and respect, I can[no]t handle anymore of this.' I went out to my desk, and ... another supervisor came by. I showed him the collage while I was crying, and approximately 15 minutes later [the other supervisor] came out and I asked him if he would notify the ... [Threat Assessment Team], and I told him that I could not handle any more, that I was leaving.... I went home, so emotionally upset ... and I called my doctor."

Appellant related that she thereafter had her daughter drive out to consult a doctor, who gave her medication and released her to return to work after 10 days. When she returned to work, she was still not ready to resume her duties, so she returned to her doctor, who gave her more medication. Appellant stated that she reported this incident to her local police department, who investigated it as a terroristic threat. She asserted that she felt threatened by the incident and that she felt unable to function as she did prior to the incident.

In addition, appellant submitted two statements dated January 24, 1997 from fellow employees which described her account of events on June 28, 1996, *i.e.*, that she received a profane and threatening letter containing offensive and pornographic material at her office mail box, to which she reacted with emotional stress.[2] The record also contains a police report dated July 18, 1996 which indicated that appellant filed a report on that date and provided a description consistent with that given in her September 24, 1996 statement.

[2] The record also contains a January 23, 1997 statement from appellant's postmaster, who stated that he was not present to observe the events as described to him by appellant but that they appeared to be consistent with what was reported to him. The postmaster stated that he visited with appellant and her family on July 1, 1996, at which time she appeared "very distraught" by the events described in her statement. He related that appellant took the letter as a threat and felt very threatened by it. He also stated that he encountered appellant when she attempted to return to work 10 days later, when she again appeared emotionally upset, and he told her to take the day off in order to regain her composure. Subsequently, the postmaster invited appellant to his office to check on her condition and found her unable to function in her job that day. Finally, the postmaster was shown the letter and accompanying materials in question on "July 1, 1997" and found it to be "extremely objectionable, pornographic and distasteful," and he commented that he could understand how appellant would be threatened by its contents.

By letter dated January 9, 1997, the Office requested that appellant submit additional factual and medical information.

By letter dated February 4, 1996, the employing establishment controverted the claim. In this letter, the employing establishment conceded that appellant was in the performance of duty while opening the mail, although it stated that it bore no responsibility for its content. The employing establishment further stated that appellant's fears and perceptions regarding her reaction to alleged pornographic material was not compensable.

By decision dated February 21, 1997, the Office rejected appellant's claim for compensation on the grounds that the evidence of record failed to demonstrate that the claimed injury occurred in the performance of duty.

By letter dated May 22, 1997, appellant's attorney requested reconsideration.

By decision dated July 2, 1997, the Office denied appellant's application for review on the grounds that it neither raised substantive legal questions nor included new and relevant evidence such that it was sufficient to require the Office to review its prior decision.

The Board finds that appellant's injury was not sustained in the performance of duty on June 28, 1996.

The Federal Employees' Compensation Act provides for payment of compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[3] The phrase " sustained while in the performance of his duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of employment."[4] "In the course of employment" relates to the elements of time, place and work activity. To arise in the course of employment, an injury must occur at a time when the employee may reasonably be said to be engaged in his master's business, at a place when he may reasonably be expected to be in connection with his employment, and while he was reasonably fulfilling the duties of his employment or engaged in doing something incidental thereto. As to this phrase, the Board has accepted the general rule of workers' compensation law that, as to employees having fixed hours and places of work, injuries occurring on the premises of the employing establishment, while the employee is going to or from work, before or after working hours, or at lunch time, are compensable.[5] Given this rule, the Board has also noted that the course of employment for employees having a fixed time and place of work includes a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts, and what constitutes a

[3] 5 U.S.C. § 8102(a).

[4] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[5] *Narbik A. Karamian,* 40 ECAB 617, 618 (1989).

reasonable interval depends not only on the length of time involved, but also on the circumstances occasioning the interval and the nature of the employee's activity.[6]

This alone is not sufficient to establish entitlement to compensation. The employee must establish the concurrent requirement of an injury " arising out of the employment." "Arising out of employment" requires that a factor of employment caused the injury.[7] It is incumbent upon appellant to establish that it arose out of his employment; that is, the accident must be shown to have resulted from some risk incidental to the employment. In other words, some contributing or causal employment factor must be established.[8] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration.[9]

With respect to whether appellant's injury arose in the course of employment, there is no dispute in this case as to whether appellant has met the criteria of time and place. The incident occurred at 1:30 p.m., in the middle of the workday, and occurred on the premises of the employing establishment. The Office found, however, that appellant's injury did not arise in the course of employment because at the time of her injury she was picking up personal mail, a personal act, and was therefore neither fulfilling the duties of her employment nor engaged in doing something incidental thereto. The evidence establishes that at the time of her injury appellant checked her post office box at the employing establishment for mail, and received a profane and threatening letter accompanied by pornographic and offensive pictures. Appellant was not, therefore, engaged in an activity contributing directly to the accomplishment of her assigned duties. There is no evidence, moreover, that the offending mail was sent by an employing establishment employee, that it was sent at the behest of the employing establishment, or that it was sent to appellant as a postal employee. Therefore, appellant has failed to meet her burden to establish that some contributing or causal employment factor precipitated, aggravated or accelerated her injury.[10]

As there is no evidence that appellant's injury resulted from any employment-related factors, it cannot be said that appellant's injury arose out of her federal employment. The Board therefore affirms the Office's February 21, 1997 decision denying compensation.

The Board finds that the Office did not abuse its discretion by refusing to reopen appellant's case for further review on the merits of her claim under 5 U.S.C. § 8128(a).

Under 20 C.F.R. § 10.138(b)(1), a claimant may obtain review of the merits of his or her claim by showing that the Office erroneously applied or interpreted a point of law; by advancing a point of law or fact not previously considered by the Office; or by submitting relevant and

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[6] *Id.*

[7] *Ray C. Van Tassell, Jr.,* 44 ECAB 316 (1992).

[8] *Dwight D. Henderson,* 46 ECAB 441 (1995).

[9] *Bettina M. Graf,* 47 ECAB 687 (1996); *Christine Lawrence,* 36 ECAB 422 (1985).

[10] *Dwight D. Henderson, supra* note 8*; Bettina M. Graf, supra* note 9.

pertinent evidence not previously considered by the Office.[11] Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.[12] Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.[13]

In the present case, appellant has not shown that the Office erroneously applied or interpreted a point of law; she has not advanced a point of law or fact not previously considered by the Office; and she has not submitted relevant and pertinent evidence not previously considered by the Office. Additionally, in his May 22, 1997 letter appellant's attorney did not show that the Office erroneously applied or interpreted a point of law nor did it advance a point of law or fact not previously considered by the Office. Although counsel generally contended that appellant sustained an injury in the performance of duty on June 28, 1996, he failed to submit new and relevant evidence in support of this contention. Therefore, the Office did not abuse its discretion in refusing to reopen appellant's claim for a review on the merits.

The decisions of the Office of Workers' Compensation Programs dated July 2 and February 21, 1997 are hereby affirmed.

Dated, Washington, D.C.
December 17, 1999

Michael J. Walsh
Chairman

David S. Gerson
Member

Michael E. Groom
Alternate Member

[11] 20 C.F.R. § 10.138(b)(1); *see generally* 5 U.S.C. § 8128(a).

[12] 20 C.F.R. § 10.138(b)(2).

[13] *Howard A. Williams*, 45 ECAB 853 (1994).